

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

HARRY FRANKLIN PHILLIPS
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

APPLICATION FOR A SIXTY DAY EXTENSION OF TIME
IN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI TO
THE FLORIDA SUPREME COURT

CAPITAL CASE

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Petitioner Harry Franklin Phillips, by and through undersigned counsel, and pursuant to 28 U.S.C. § 2101(d) and Rules 13.5 and 30.2 of this Court, respectfully requests an extension of time of sixty (60) days to file a petition for writ of certiorari to the Florida Supreme Court, to and including June 22, 2018. Mr. Phillips is a death-sentenced inmate in the custody of the State of Florida. This

Court has jurisdiction to review the decision of the Eleventh Circuit Court of Appeals under 28 U.S.C. § 1257(a).

Mr. Phillips was convicted of murder and sentenced to death in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. This case involves the decision of the Florida Supreme Court entered on January 22, 2018 denying Mr. Phillips's claim that his sentence of death is unconstitutional in light of the decisions in *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Hurst v. State*, 202 So. 3d 40 (2016), *cert. denied*, 137 S. Ct. 2161 (2017). *See Phillips v. State*, 234 So. 3d 547 (Fla. 2018). (Attachment A).

Neither Mr. Phillips nor Respondent filed a motion for rehearing with the Florida Supreme Court. Mr. Phillips's time to petition for certiorari in this Court regarding the Florida Supreme Court's denial of relief expires on Monday, April 23, 2018.¹ This application for a sixty (60) day extension is being filed ten (10) or more days before that date. Undersigned counsel shows the following good cause in support of this request.

Undersigned counsel serves as Litigation Director at the Capital Collateral Regional Counsel-South (CCRC-South). The office is responsible for litigating some fifty (50) capital cases in both state postconviction and federal habeas corpus proceedings. Counsel has numerous briefs, petitions, and motions due and pending

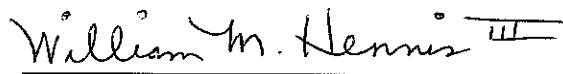
¹ The 90th day is on a Sunday, April 22, 2018.

in various other capital cases in the coming weeks, including state postconviction litigation in Mr. Phillips' case concerning intellectual disability.

Given undersigned counsel's extensive duties as Litigation Director, as well as his responsibilities in his own individual cases, counsel has not been able to prepare a proper petition for writ of certiorari in Mr. Phillips's case. If the sixty (60) day extension of time is provided, counsel's intention is to file a petition for certiorari on or before June 22, 2018.

Wherefore, Mr. Phillips respectfully requests that an order be entered extending his time to petition for certiorari to and including June 22, 2018.

Respectfully submitted,



WILLIAM M. HENNIS III

Florida Bar No. 0066850

Litigation Director

CCRC South

hennisw@ccsr.state.fl.us

**Counsel of record*

CCRC-South

1 East Broward Boulevard, Suite 444

Fort Lauderdale, FL 33301

(954) 713-1284

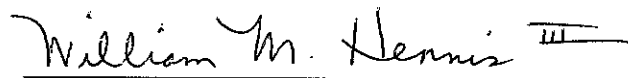
(954) 713-1299 (fax)

Attorney for Petitioner

PROOF OF SERVICE

I, William M. Hennis III, counsel for petitioner and a member of the Bar of

this Court, hereby certify that a true copy of the foregoing Application has been electronically served with appropriate hard copies provided by Federal Express Delivery to the Court and furnished by United States Mail, first class postage prepaid to Assistant Attorney General Melissa Roca Shaw at the Office of the Attorney General, SunTrust International Center, One S.E Third Avenue, Suite 900, Miami, FL 33131, on April 10, 2018. I further certify that all parties required to be served have been served.



WILLIAM M. HENNIS III
Florida Bar No. 0066850
Litigation Director

ATTACHMENT A

234 So.3d 547
Supreme Court of Florida.

Harry Franklin PHILLIPS, Appellant,

v.

STATE of Florida, Appellee.

No. SC17-984

[January 22, 2018]

Synopsis

Background: Motion was filed for post-conviction relief challenging death sentence following affirmance, 476 So.2d 194. The Circuit Court, Dade County, Nushin G. Sayfie, J., No. 131983cf0004350001XX, denied motion. Movant appealed.

[Holding:] The Supreme Court held that Supreme Court's *Hurst v. Florida*, 136 S.Ct. 616, decision invalidating Florida's capital sentencing scheme did not apply retroactively to sentence of death that became final in 1998.

Affirmed.

Pariente, J., concurred in result and filed statement.

Lewis and Canady, JJ., concurred in result.

West Headnotes (1)

[1] Courts

↔ In general;retroactive or prospective operation

United States Supreme Court's *Hurst v. Florida*, 136 S.Ct. 616, decision invalidating Florida's capital sentencing scheme as violating Sixth Amendment did not apply retroactively to sentence of death that became final in 1998. U.S. Const. Amend. 6.

Cases that cite this headnote

*548 An Appeal from the Circuit Court in and for Dade County, Nushin G. Sayfie, Judge—Case No. 131983CF0004350001XX

Attorneys and Law Firms

Neal Dupree, Capital Collateral Regional Counsel, William Hennis, and Marta Jaszczolt, Assistant Capital Collateral Regional Counsel, Southern Region, Ft. Lauderdale, Florida, for Appellant

Pamela Jo Bondi, Attorney General, and Melissa J. Roca, Assistant Attorney General, Miami, Florida, for Appellee

Opinion

PER CURIAM.

We have for review Harry Franklin Phillips' appeal of the circuit court's order denying Phillips' motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const.

Phillips' motion sought relief pursuant to the United States Supreme Court's decision in Hurst v. Florida, — U.S. —, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), and our decision on remand in Hurst v. State (Hurst), 202 So.3d 40 (Fla. 2016), cert. denied, — U.S. —, 137 S.Ct. 2161, 198 L.Ed.2d 246 (2017). This Court stayed Phillips' appeal pending the disposition of Hitchcock v. State, 226 So.3d 216 (Fla. 2017), cert. denied, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017). After this Court decided Hitchcock, Phillips responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in this case.

After reviewing Phillips' response to the order to show cause, as well as the State's arguments in reply, we conclude that Phillips is not entitled to relief. Phillips was sentenced to death following a jury's recommendation for death by a vote of seven to five. Phillips v. State, 705 So.2d 1320, 1321 (Fla. 1997). Phillips' sentence of death became final in 1998. Phillips v. Florida, 525 U.S. 880, 119 S.Ct. 187, 142 L.Ed.2d 152 (1998). Thus, Hurst does not apply retroactively to Phillips' sentence of death. See Hitchcock, 226 So.3d at 217. Accordingly, we affirm the denial of Phillips' motion.

The Court having carefully considered all arguments raised by Phillips, we caution that any rehearing motion containing reargument will be stricken. It is so ordered.

LABARGA, C.J., and QUINCE, POLSTON, and LAWSON, JJ., concur.

PARIENTE, J., concurs in result with an opinion.

LEWIS and CANADY, JJ., concur in result.

PARIENTE, J., concurring in result.

I concur in result because I recognize that this Court's opinion in Hitchcock v. State, 226 So.3d 216 (Fla. 2017), cert. denied, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017), is now final. However, I continue to adhere to the views expressed in my dissenting opinion in Hitchcock.

All Citations

234 So.3d 547, 43 Fla. L. Weekly S22

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.